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IN THE

Supreme Court of the United States

OCTOBER TERM, 1941

Nos. 287-288

KENNETH M. KEEFE, ERNEST E. QUANTRELL and PULHAM C. WILMERDING, on Behalf of Themselves and All Other Owners and Holders of Bonds of Bloomfield Village Drain District and Bloomfield No. 1 Storm Sewer Drain District,
Petitioners,
vs.
BLOOMFIELD VILLAGE DRAIN DISTRICT, BLOOMFIELD No. 1 STORM SEWER DRAIN DISTRICT, ETC., et al.,
Respondents

PETITION FOR REHEARING ON APPLICATION FOR WRIT OF CERTIORARI AND BRIEF IN SUPPORT THEREOF

DAVID M. WOOD,
RAYMOND K. DYKEMA,
Counsel for Petitioners,
Penobscot Building,
Detroit, Michigan.

Interstate Brief & Record Co., Cass Bldg., 457 Fort St. W., Detroit

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Respondents

PETITION FOR REHEARING ON APPLICATION FOR WRIT OF CERTIORARI

The above petitioners hereby respectfully petition the Court to grant a rehearing on the petition for certiorari heretofore denied October 13, 1941, for the following reasons:

1. The decision of the Court of Appeals, Sixth Circuit, entitled *Bloomfield Village Drain District, et al., v. Keefe, et al.*, 119 F. (2) 157, conflicts with local law in the particu-

lars set forth in paragraph 2 of the reasons relied upon for allowance of writ in the petition for certiorari.

2. The Supreme Court of Michigan will, within a short time, decide a case which presents identical questions of law, which decision will be conclusive as to the applicable principles of law governing this case, and this Court should await such decision.

This motion is based upon the records and files herein and accompanying brief.

Counsel for petitioners hereby certify that this petition is presented in good faith and not for delay.

DAVID M. WOOD,
RAYMOND K. DYKEMA,
Counsel for Petitioners.

BRIEF IN SUPPORT OF PETITION FOR REHEARING

The accompanying motion is confined to those points which have to do with local law and on which federal courts cannot exercise an independent judgment. The petition for certiorari in paragraph 2 of the reasons relied upon for allowance of the writ sets forth the particulars on which petitioners believe that the Court of Appeals came to a conclusion opposed to local law. Briefly these points of conflict are: (a) holding the improvement is illegal under Michigan law, (b) holding that the bond recitals do not protect *bona fide* holders of the bonds against the claims of illegal action by the drain district and drain commissioner, (c) holding that estoppel of the drain district to plead illegality does not establish the duty of officers and others to provide funds for bond payments, (d) ignoring the point that under the drain law and interpretations in effect when the bonds were issued collateral attack was barred, and (e) ignoring the point that money collected and on hand for distribution to bondholders should be distributed irrespective of the validity or non-validity of the bonds.

By prior proceedings herein, and particularly by petitioners' motion to enlarge the time for filing a petition for rehearing, this court was advised that a case will soon be decided by the Supreme Court of Michigan in which points a, b, c and d are involved. We refer to *City of Highland Park, et al. v. Clark, et al.,* which has now been orally argued, and in which briefs have been filed. The opinion of the Michigan Supreme Court can now be expected within a few days or weeks.

While no one, except the Michigan Court, knows what the decision in the City of Highland Park case will be, we believe it must definitely declare the law of Michigan as to the kind of a drainage improvement the drain commissioner was authorized under the Michigan Drain Law to build, and even if it is decided that the drainage improvement there involved, which is similar to those involved in this and companion cases, was an illegal sewer rather than a drain, it must still decide whether the bonds are enforceable on the principle of estoppel.

The Court of Appeals' decision is based upon its conception of Michigan law. It in effect assumes that the Michigan court of last resort would be required to decide the case as it decided it. Within a very short time we will know whether this assumption is correct. Respondents in this case must recognize that the forthcoming opinion of the Michigan Court must either confirm what the Court of Appeals has decided, or flatly contradict it, for they have filed briefs *amici curiae* urging that the Court of Appeals' opinion ought to be followed.

The granting of a rehearing can visit no harm upon respondents, for if the Michigan Court decides as they urge it to do in their briefs *amici curiae,* it will end this case. As no money or property is withheld from respondents they will have suffered no loss as a result of the brief period of time during which the matter remains undecided. On the other hand, holders of these bonds will suffer great and irreparable loss if the Michigan Court should flatly disagree with the Court of Appeals and hold that it has wrongly construed local law, and the decree of the latter court stands without an opportunity to review. It will then mean that bondholders' rights have been judged by a conception of law proven to be erroneous.

DAVID M. WOOD,
RAYMOND K. DYKEMA,
Counsel for Petitioners.

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PETITIONERS' SUPPLEMENTAL BRIEF SUPPORTING PETITION FOR REHEARING

DAVID M. WOOD,
RAYMOND K. DYKEMA,
2746 Penobscot Building,
Detroit, Michigan,
Counsel for Petitioners.

Interstate Brief & Record Co., Cass Bldg., 457 Fort St. W., Detroit

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PETITIONERS' SUPPLEMENTAL BRIEF SUPPORTING PETITION FOR REHEARING

The pending petition for rehearing of the court's order denying certiorari has not been acted upon, we believe, because the court has deemed it necessary to await the opinion of the Michigan Court of last resort in the similar case of *City of Highland Park v. Clark.* Opinions of the Michigan Court have been received and a copy thereof as

submitted to counsel appears in briefs filed by respondents in the related cases of *Keefe, et al. v. Martin Drain and Branches Drain District, No. 289,* and *Keefe, et al. v. Centerline Relief Drain District, No. 290.* We urge the following action by this court:

1. **ACTION BY THIS COURT SHOULD BE DEFERRED UNTIL IT IS KNOWN THAT THE OPINIONS AS FILED BY THE MICHIGAN SUPREME COURT, IN CITY OF HIGHLAND PARK v. CLARK, ARE FINAL AND OFFICIAL.**

We refer the court and counsel for respondents to what was said under this title in our reply to the brief filed by respondents in the companion case of *Keefe v. Martin Drain and Branches Drain District, No. 290.* As we there point out, it is likely that the opinion in the City of Highland Park case may be changed in some respects, and furthermore, until the Michigan Court acts upon the motion for rehearing which the relators in that case have filed, it is not known that this is the final word of the Michigan Court on the issues involved. In the brief filed by us in the Martin case, we have set up in full the motion for rehearing presented to the Michigan Court, and brief in support thereof.

2. EVEN IF THE STATE COURT'S OPINION REMAINS IN SUBSTANTIALLY THE SAME FORM AS THE ONE ON FILE, IT DEMONSTRATES THE TRUTH OF PETITIONER'S CONTENTION THAT THE LOWER COURT ERRED IN DETERMINING LOCAL LAW.

(a) The essential and necessary step in the lower court's reasoning was that decrees and opinions in *Meyering Land Co. v. Spencer*, 273 Mich. 703, and *Detroit Fire and Marine Insurance Co. v. Oakland County*, 284 Mich. 130, constituted a former adjudication of bondholders' rights. The lower court said (R. 461):

> "The officers of the drain district represented all creditors of the district, including the bondholders, in the state court cases, and thus appellants (appellees) had notice and were given their day in court in those cases."

Because of this, the lower court said later:

> "Those cases are *res judicata* as to the determinative facts of this controversy."

This point is flatly contradicted by the Michigan Court. It says (see p. 9 of respondents' supplemental brief in the Martin case):

> "We do not say that the Village of Oak Park case, *supra*, is *res judicata* of the rights of these relator bondholders, nor do we hold that they had their day in court through representation of the drain commissioner, who was the defendant in that action."

While it held that the Oak Park case, which involved the same improvement, is a precedent which it should follow, that reasoning cannot be applied here. In the Michigan decision it was based on the proposition that "no facts are adduced in this case outside of those before us in *Village of Oak Park v. Van Wagoner.*" The District Court

held that these improvements are sewers rather than drains, but not upon grounds or facts considered by the State Court. The Master's report shows different facts (R. 85). Petitioners, in the lower court, strenuously objected to the conclusion that the two Bloomfield drains are illegal, demanding a consideration of the question of the sufficiency of the evidence in law to support the District Court's conclusion. The lower court did not give this consideration because it thought, erroneously, as it now appears, that the prior State Court cases were *res judicata.* Had it not been for this erroneous view, it is logical to expect that it would have followed the course previously pursued by it in *Royal Oak Drain District v. Keefe,* 87 Fed. (2) 786, and considered the sufficiency of the evidence.

(b) The lower court rejected the authority of *Thompson v. Village of Mecosta,* 127 Mich. 522, and *Schmid v. Village of Frankfort,* 131 Mich. 197, saying that "the villages themselves took part in the false recital" (R. 461). The Michigan Supreme Court, however, accepts these cases as authorities which would rule the decision in all cases involving drain bonds *bona fide* held, where the bonds themselves contained no notice of infirmity.

In this case two issues of bonds are involved, those of the Bloomfield Village Drain District and those of the Bloomfield No. 1 Storm Sewer Drain District. In the first described issue there can be no claim that the bonds themselves contained notice of an infirmity. They state on their face merely that the proposed project is to be a drain. Nowhere in the proceedings or the bonds is the project called a "storm sewer drain" (R. 19, 421). It is, therefore, apparent that applying the rule set forth in the Michigan opinion, these bonds carried a false pretense entitling purchasers to the benefit of the estoppel rule declared and applied in *Thompson v. Village of Mecosta (supra).*

In respect to the other issue, it might superficially appear that the lower court reached a correct conclusion, although under a wrong reason, because the words, "storm sewer drain" were used in the bonds and proceedings. However, in the record in this case we have an explanation of the term, "storm sewer." One of the engineering witnesses defined the term as follows (R. 179):

> "The word 'storm' is used in front of 'sewer' as 'storm sewer.' That always means a sewer or drain which really is a drain, but it always means a conduit that is used primarily for drainage of waters. The term 'storm sewer' as a term to indicate a storm water drain is more common in well built up cities. Oftentimes it gets incorporated into city charters to distinguish that type of conduit from the sanitary sewers and the storm sewers of the city. The storm sewers being purely drains and being designed to take care of the surface water runoff, and the sanitary sewers being designed and used to collect and dispose of sewage but both being called sewers."

Nowhere does it appear that respondents took issue with this statement or claimed that the name applied to the project carried any significance. The contest occurred over whether the project was intended to serve primarily as a sanitary sewer. With the record in this case showing that a "storm sewer" is primarily a drainage improvement, it must follow that the name given to the improvement emphasized the information contained in the bond recitals that a legal purpose was intended.

We, therefore, submit that as to both issues of bonds it is now apparent that if the Michigan Court had before it all the facts shown in this case, it would hold the drain districts estopped to plead the falsity of their bond recitals.

(c) Recognition of the authority of *Thompson v. Mecosta (supra)*, and other Michigan cases of like import,

and the authorities cited therein, necessarily controverts the lower court's theory that the recitals in these bonds did not have such form as to make them inconsistent with the claim that the improvement was not to be a drain. In the Thompson case, the recital was merely compliance with the governing law. Here the bonds not only recite compliance, but add the further statement of the due happening, existence and performance of all acts and events essential to their validity.

It cannot be doubted that had the lower court known the views of the Michigan Court of last resort, as expressed in this opinion, it would have eliminated from its opinion its determination that a decree in a prior suit was *res judicata,* that a drain district's bonds with recitals such as these do not carry a false pretense, and that such bonds would not estop the district to assert that the improvement built with their proceeds was not a drain. With these propositions eliminated, we believe it logical to infer that the lower court would have affirmed the district court's decree.

We submit that the opinion of the state court demonstrates vital errors by the lower court in its assumption that local law required it to reverse the district court in this case. Local law, in its application to drain bonds and the facts in this case, is now known, or will be as soon as this opinion of the Michigan Court becomes final and official. Therefore, the petition for rehearing and petition for certiorari should be granted, and the case reversed and remanded to the lower court, with directions to decide the case in accordance with the now known principles of local law.

DAVID M. WOOD,
RAYMOND K. DYKEMA,
Counsel for Petitioners.

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RESPONDENTS' SUPPLEMENTAL BRIEF IN OPPOSITION TO PETITION FOR REHEARING OF PETITION FOR WRIT OF CERTIORARI

JAMES R. BREAKEY, JR.,
1214 Majestic Building,
Detroit, Michigan,
Counsel for Respondents.

Interstate Brief & Record Co., Cass Bldg., 457 Fort St. W., Detroit

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RESPONDENTS' SUPPLEMENTAL BRIEF IN OPPOSITION TO PETITION FOR REHEARING OF PETITION FOR WRIT OF CERTIORARI

Heretofore this Court denied the Petition for a Writ of Certiorari in this matter. After denial, counsel for petitioners moved for a rehearing, repeating their claim, that the Circuit Court of Appeals misinterpreted Michigan law.

This, petitioners asserted would be proven by a forthcoming decision of the Supreme Court of Michigan in the pending case of *City of Highland Park, et al.* against *Earl L. Clark, Drain Commissioner of Oakland County.* This Michigan case is a mandamus proceeding, commenced by the same attorneys who represented petitioners herein in the lower courts, after this Court had denied certiorari herein. Counsel for petitioners urged upon this Court that in the case to be decided, the Supreme Court of Michigan would state what the law of Michigan applicable to the present matter really was. We assume this Court as a result has withheld action upon the petition for rehearing.

The Supreme Court of Michigan in Highland Park v. Clark Has Approved the Circuit Court's Interpretation of Michigan Law Herein

On February 11, 1942, the Supreme Court of Michigan decided the Highland Park-Clark case. It held the drain bonds there involved were void, for the same reasons given by the Circuit Court of Appeals in the instant case, viz: the proceedings taken by the Drain Commissioner were without jurisdiction on his part and void; consequently bonds issued as part of such proceedings were also void. Thus the Supreme Court of Michigan decided the Highland Park-Clark case completely in accord with the 6th Circuit in the present matter, holding that bond recitals of full compliance with law did not estop denial of validity of the bonds, where there was a total lack of jurisdiction to act. The complete opinion of the Michigan Supreme Court has been made a part of a brief filed in this matter by counsel for Nine Mile-Halfway Drain District, a companion case of the present one. That opinion being on record, we shall not encumber the record further by attaching it to this brief.

The Supreme Court of Michigan Has Affirmed Highland Park v. Clark on Rehearing

After the Supreme Court of Michigan decided the Highland Park-Clark case, and in positive language approved the decision of the Circuit Court of Appeals in the instant case, this Court was informed of the action by counsel for the Nine Mile-Halfway Drain District, who urged this Court to deny the pending petition for rehearing. A further brief was at the same time filed by counsel for petitioners, who claimed the law of Michigan was not yet settled, because they had filed a petition for rehearing in the Highland Park-Clark case. They requested this Court to delay action further until the Michigan Supreme Court by its action on their rehearing petition finally stated what the law of Michigan was.

On March 17, 1942, the Supreme Court of Michigan denied the petition for rehearing in the Highland Park-Clark suit. The denial of rehearing was without further opinion.

The Supreme Court of Michigan now having placed its approval in no uncertain terms, and surely with finality, upon the questions of drain law involved in the instant case, and the question of estoppel to deny recitals in bonds, there is no reason for longer delaying action in this Court.

No Ground for Certiorari Exists

In our previous brief, we asserted petitioners presented no recognized reason for the issuance of a writ of certiorari herein. We pointed out that no Federal question was involved, and we believe it is conceded by counsel for petitioners that the only alleged basis for the writ was, that the Circuit Court of Appeals had misconstrued Michi-

gan law. This Court undoubtedly denied the petition for a writ, because it clearly appeared that the Circuit Court of Appeals had correctly applied the principles of law as had been established by the Supreme Court of the State of Michigan. Undoubtedly too, this Court withheld action on the petition for rehearing until the Supreme Court of Michigan passed upon the Highland Park-Clark case, because of petitioners' urgent request, and until it was certain that the Circuit Court of Appeals had properly interpreted and applied the law of Michigan in the instant case. After the opinion of the Supreme Court of Michigan in the Highland-Park-Clark case, and after the denial by the same court of a petition for rehearing, there should be no doubt about the law of Michigan in the instant case.

Reply to Petitioners' Last Brief

In the most recent brief filed herein by counsel for petitioners, entitled "Petitioners' Supplemental Brief Supporting Petition for Rehearing," it was claimed (page 2):

> "Action by this Court should be deferred until it is known that the opinions as filed by the Michigan Supreme Court, in *City of Highland Park v. Clark,* are final and official."

That has now been firmly and finally decided, and there should be no reason for further delay.

In this last mentioned brief, petitioners also state (page 3):

> "Even if the State Court's opinion remains in substantially the same form as the one on file, it demonstrates the truth of petitioners' contention that the lower court erred in determining local law."

Under this second heading, petitioners' counsel apparently argue that in spite of the Highland Park-Clark decision, this Court should still grant a writ of certiorari. This is directly in conflict with what they previously represented to this Court, when they urged delay until the law of Michigan would be finally settled in the Highland Park-Clark case. Apparently, petitioners' counsel are arguing that this Court should still refuse to accept the Supreme Court of Michigan's statements of applicable Michigan law, in spite of the unambiguous language in which that Court put its approval upon the law of Michigan as interpreted by the Circuit Court of Appeals in the present case. It is somewhat ironic too, after securing an expression of Michigan law at their own request and for the specific purposes of this present case, that petitioners now apparently ask this Court to ignore it.

In view of this position, we should for a moment consider this situation. Petitioners' counsel say that the Circuit Court of Appeals was in error, when it held previous Supreme Court decisions of Michigan *res adjudicata* of matters in the Bloomfield and Nine Mile cases. The Supreme Court of Michigan in the Highland Park-Clark case held that the previous decision there involved was *stare decisis* of the Highland Park-Clark case, having the bare record and no additional testimony before it. It did not hold as the Circuit Court of Appeals, following the Kersh Lake case previously decided by this case, that those matters were *res adjudicata*. However, the opinion of the Circuit Court of Appeals herein would have been exactly the same if it had not held previous decisions to be *res adjudicata*, or, even if it did not hold the previous decisions to be *stare decisis. This is so because in the instant cases, detailed and minute testimony was taken concerning the nature of the structures themselves.* From

this detailed evidence, the Master and the District Judge specifically found that the drain proceedings involved were illegal and beyond the jurisdiction of the Drain Commissioner. This conclusion was reached, not by holding previous decisions of the Michigan Supreme Court *res adjudicata,* but strictly upon the facts themselves and the previous Michigan constructions of Michigan Drain Law. The Master, the District Judge, and the Circuit Court of Appeals all held in arriving at this conclusion, that previous Michigan decisions declaring the law of Michigan, where a Drain Commissioner exceeded his jurisdiction, were binding upon them by virtue of this Court's decision in the now well known case of *Erie Railroad Company v. Tompkins,* 304 U. S. 64; 82 L. Ed. 1188. The Master and the District Judge made their conclusions of illegality of the projects solely upon the evidence before them. Hence, regardless of *res adjudicata,* those findings of fact stand alone.

The decision of the Circuit Court of Appeals in the instant cases would be the same whether the matter of *res adjudicata* and the Kersh Lake case were mentioned at all. Consequently, the fact that the Supreme Court of Michigan said previous decisions were *stare decisis,* while the Circuit Court of Appeals following the Kersh Lake case said they were *res adjudicata* makes no difference whatsoever, and regardless of previous decisions in the instant cases, the projects would be held illegal. To reopen this phase of the situation in this Court, would require a finding, first, that the Master was clearly in error in his finding on the subject, and a further conclusion that the District Judge was also in error when he reached that conclusion of illegality based upon the actual testimony and facts in the record before him. The illegality of the projects involved here stands unaffected by either the *stare decisis* or the *res adjudicata* doctrine.

Surely a requested redetermination of facts is not a ground for granting a writ of certiorari by this Court. The determination of facts made in the court below is identical with the determination on identical facts made by Michigan Circuit Courts, and approved by the Supreme Court of Michigan in cases involving these identical projects. Such determinations are far from erroneous.

Counsel for petitioners in their most recent Supplemental Brief further argue that the Supreme Court of Michigan in the Highland Park-Clark decision must be wrong as to what was meant by *Thompson v. Village of Mecosta,* 127 Mich. 522. Counsel argue that Justice Bushnell in his opinion lays stress upon the fact that the words "storm sewer" were used in the proceeding involved in Highland Park-Clark. Counsel argue that therefore the Supreme Court of Michigan's decision in Highland Park-Clark was based upon the fact that the word "sewer" was used in the title of the structure and in the bonds themselves, which upon their face show that a sewer was being constructed which was beyond the jurisdiction of the Drain Commissioner. Justice Bushnell did lay stress upon this fact, and counsel for petitioners now state that this Court should not accept the Highland Park-Clark case because only one of the structures involved in the Bloomfield-Nine Mile Halfway cases involved the words "storm sewer." This argument is shallow and specious. Justice Bushnell in his Highland Park-Clark opinion very clearly stated that where there was a total lack of power to act, recitals in bonds did not estop a denial of their validity. That is the exact proposition upon which the Circuit Court of Appeals decided this present case. In Justice Boyles' opinion in the Highland Park-Clark case, he also stated that in Michigan where there was a total lack of power to act, recitals in bonds did not estop denial of their validity.

The argument in this respect is shallow because it attempts to lead this Court on a bypath of no consequence, and to have this Court ignore the substantial meaning and import of the decision.

These Identical Arguments Were Presented to the Supreme Court of Michigan on Petition for Rehearing of the Highland Park-Clark Case

In the motion for rehearing filed in the Supreme Court of Michigan in the Highland Park-Clark case, Voorheis, Long, Ryan & McNair, Dykema, Jones & Wheat, and Thompson, Wood & Hoffman, attorneys for petitioners herein in the Circuit Court of Appeals and Lower Court cases said (page 5):

> "As this court knows, this is but one of many controversies of a similar nature, and what this court says probably will affect the final outcome of *Bloomfield Village Drain District v. Keefe,* 119 Fed. (2) 157, which still remains unsettled. The Supreme Court of the United States has held petitions for reconsideration of its order denying certiorari for about three months, undoubtedly because it feels that it should not decide a question of local law of so much importance until this case is decided. We foresee perplexity both by that court and lower courts in this state which will have similar cases before them, to know whether emphasis on the term 'storm sewer drain' is vital. This is only one of a few cases where that term is used. Does the decision mean that if the title of the improvement was merely Royal Oak No. 7 Drain, the *bona fide* holder would be protected? It is peculiarly important in the matter before the United States Supreme Court because five issues of bonds are there involved, only one of them using the term 'storm sewer drain.' We respectfully urge the desirability of clarifying this point."

In view of the foregoing statement, which was placed squarely before the Supreme Court of Michigan, when it considered a rehearing of the Highland Park-Clark case, there can be little doubt about the Michigan Court denying the requested rehearing with full knowledge that the decision it was making would directly affect the instant cases before this Court.

John P. O'Hara, one of the attorneys in the Bloomfield Village Drain District cases in the lower courts, filed a brief *amicus curiae* in the Highland Park-Clark rehearing matter. In this brief *amicus* stated:

> "On page 5 relators state that they earnestly request the rehearing in order that certain erroneous conceptions disclosed by the two opinions in this case, can be corrected. They proceed further to point out that the Supreme Court of the United States in the Bloomfield Village case, *et al.* will be unable to understand the law of the State of Michigan unless a rehearing is granted."

Further in this brief the following was urged upon the Supreme Court of Michigan:

> "We cannot see how the Supreme Court of the United States could have the slightest doubt of the meaning of the opinion in the instant case, because in the opinion of Justice Boyles, concurred in by all of the Justices of this Court, including Justice Bushnell, it is stated:
>
> > 'The Federal courts likewise recognize the Michigan rule, here repeated, that the drain district or municipality is not estopped from denying validity of a bond issue on the ground of total lack of jurisdiction. *Bloomfield Village Drain District v. Keefe,* and four other cases (U. S. Circuit Court of Appeals (6th Circuit), March 14, 1941), 119 Fed. (2d) 157.'

In addition to both opinions, Judge Bushnell's and Justice Boyles', stating that where there is want of jurisdiction, estoppel to deny recitals does not arise, which is exactly what the Circuit Court of Appeals said in the Bloomfield cases, this Court also placed its approval upon the two decisions of the Circuit Court of Appeals, which dealt with Michigan drain bonds, the Royal Oak case and the Bloomfield case. The instant decisions arrived at identically the same conclusions as those reached by the Circuit Court of Appeals. This Court once more affirmed its reasons for deciding drain cases in the past, namely, that where the primary purpose was a sewer the proceedings were void, and where the primary purpose was a drain, the proceedings were valid.

It is difficult to see how any Court could be either misled or unable to understand the clear and unambiguous meaning of the two decisions in the instant case. On the main point they both very clearly state that where there is a total lack of jurisdiction on the part of the Drain Commissioner, his recitals do not create an estoppel.

CONCLUSION

We respectfully submit that the decisions as written, clearly follow the law, that they sufficiently inform the Supreme Court of the United States of the law of Michigan, and that they should stand."

Several other briefs of like import were also before the Supreme Court of Michigan when it denied rehearing in the Highland Park-Clark case, so there can be no serious argument, that the Michigan Court did not understand its decision was placing either approval or disapproval upon the Circuit Court of Appeals decision in the Bloomfield-Nine Mile cases, the very cases in which this Court is now asked to say the law of Michigan was not properly interpreted.

Conclusion

We urge that this Court deny the petition for rehearing of its previous order denying a writ of certiorari herein. The only reason given for delay by petitioners was that the Circuit Court of Appeals erroneously applied and interpreted Michigan law. This Court was urged to await the Highland Park-Clark decision. That decision was made on February 11th, 1942. It has been reexamined on petition for rehearing and is in complete accord with the decision of the Circuit Court of Appeals, which this Court is now asked to review. In addition, so there might be no mistake about approval of what the Circuit Court of Appeals said in the Bloomfield case, Justice Boyles expressly stated that the Federal Courts recognized the rules in Michigan, and then cited the present Bloomfield case as an example of such understanding. Under these circumstances, there should be no reason for further withholding a denial of the petition for a writ of certiorari herein.

JAMES R. BREAKEY, JR.,
Majestic Building,
Detroit, Michigan,
Counsel for Respondents.